

(21)
12-14-00
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See all

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DESMOND GAYLE, :
 :
 Plaintiff :
 :
 v. : CIVIL NO. 1:CV-00-0881
 :
 YORK COUNTY PRISON, ET AL., : (Judge Caldwell)
 :
 Defendant :

FILED
HARRISBURG, PA

DEC 13 2000

ORDER

MARY E. D'ANDREA, CLERK
Per *[Signature]*
Deputy Clerk

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

This civil rights action was initiated by Desmond Gayle, an inmate currently confined at the York County Prison, York, Pennsylvania. Defendants filed a motion to dismiss the complaint on September 6, 2000, and a supporting brief on September 15, 2000. Although Gayle's brief in opposition to the motion is now long overdue, he has neither made an appropriate filing nor requested an extension of time in which to do so. Therefore, the motion to dismiss may be deemed unopposed.¹ M.D. Pa. Local Rule 7.6.

¹ By order dated May 22, 2000, this court directed the parties' attention to the Local Rules of Court. The order referred

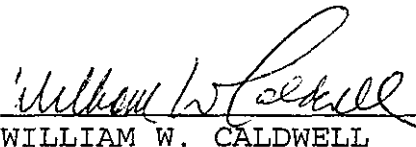
Generally, a dispositive motion may not be granted merely because it is unopposed. Because Local Rules of Court must be "construed and applied in a manner consistent with the Federal Rules of Civil Procedure," Anchorage Assoc. v. Virgin Islands Board of Tax Review, 922 F.2d 168, 174 (3d Cir. 1990), the disposition of an unopposed motion ordinarily requires a merits analysis. The Court of Appeals for the Third Circuit has stated, however, that Local Rule 7.6 can be applied to grant a motion to dismiss without analysis of the complaint's sufficiency "if a party fails to comply with the rule after a specific direction to comply from the court." Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991).

Gayle's failure either to file a brief in opposition to defendants' motion to dismiss or otherwise to communicate with the court indicates that he may have lost interest in prosecuting this lawsuit. Consequently, the court will grant the motion without a merits analysis and dismiss the case under the authority of Stackhouse if plaintiff fails to oppose the motion or otherwise communicate with the court within fifteen (15) days of the date of this order.

specifically to an opposing party's duty to file a brief in opposition to a motion within fifteen (15) days after service of the movant's brief. See M.D. Pa. Local Rule 7.6.

Accordingly, this 13th day of December, 2000, it is ordered that:

Plaintiff is directed to file a brief in opposition to defendants' motion to dismiss within fifteen (15) days of the date of this order or the motion will be deemed unopposed and granted without a merits analysis. See M.D. Pa. Local Rule 7.6; Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991).


WILLIAM W. CALDWELL
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

December 13, 2000

Re: 1:00-cv-00881 Gayle v. York County Prison

True and correct copies of the attached were mailed by the clerk
to the following:

Desmond V. Gayle
CTY-YORK
York County Prison
55438
3400 Concord Road
York, PA 17402

Donald L. Reihart, Esq.
Law Offices of Donald L. Reihart
2600 Eastern Blvd.
Suite 204
York, PA 17402

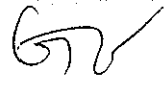
cc:
Judge ()
Magistrate Judge ()
U.S. Marshal ()
Probation ()
U.S. Attorney ()
Atty. for Deft. ()
Defendant ()
Warden ()
Bureau of Prisons ()
Ct Reporter ()
Ctroom Deputy ()
Orig-Security ()
Federal Public Defender ()
Summons Issued () with N/C attached to complt. and served by:
U.S. Marshal () Pltf's Attorney ()
Standard Order 93-5 ()
Order to Show Cause () with Petition attached & mailed certified mail
to: US Atty Gen () PA Atty Gen ()
DA of County () Respondents ()
Bankruptcy Court ()
Other _____ ()

MARY E. D'ANDREA, Clerk

DATE:

12/13/00

BY:


Deputy Clerk